IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, v. EDDIE C. ARRINGTON II, Appellant.	DIVISION ONE No. 56249-5-I UNPUBLISHED OPINION FILED: August 7, 2006

PER CURIAM – Eddie Arrington was convicted of the first degree murder of Alfie Mitchell. He challenges the sufficiency of the evidence regarding premeditation, and failure of the trial court to appoint new counsel after Arrington filed a federal civil complaint against his third court-appointed lawyer. We affirm because the trial court did not abuse its discretion when it concluded that there was no actual conflict of interest, and an eyewitness provided sufficient evidence of premeditation.

Arrington and Mitchell were neighbors and acquaintances. One evening Mitchell and witness Samuel Bligh stopped by Arrington's apartment to retrieve some of Mitchell's belongings. Arrington let them in, and the three men sat down in the living room. At some point, Arrington's friend Joanne Raine arrived, and sat on the couch next to Mitchell. Arrington and Mitchell began to argue; Arrington said Mitchell was wearing Arrington's shirt, and told Mitchell to remove

it. Mitchell did not, and Arrington produced a gun. He took out all of the bullets, then put one back in the chamber. Arrington said, "I am going to start pulling the trigger until you take my shirt off." He pulled the trigger, and the gun clicked but did not fire. Mitchell looked shocked but did not move. Bligh got up to flee. Arrington looked at the back of the gun and said, "Time's up, this one's for you." He pulled the trigger and shot Mitchell in the face at point blank range in front of Bligh and Raine. Arrington was eventually charged with first degree murder with a firearm enhancement.

Arrington complained throughout the pretrial process that his attorneys had failed to obtain evidence from the prosecutor, and were not performing adequately. Three different attorneys were replaced or withdrew. Less than two weeks before trial, Arrington then moved to replace his fourth attorney, Joe Chalverus. After a thorough review of the record and allegations, the trial court found no basis to dismiss Chalverus. Six days later, Arrington reappeared to inform the court that he had mailed a section 1983[1] complaint to federal district court, based on his previous allegations of misconduct. After another thorough review of Arrington's allegations, including his complaint, the trial court found no actual conflict of interest and denied Arrington's motion. Arrington was convicted and filed this timely appeal.

Sufficiency of the Evidence

Arrington contends that there was insufficient evidence of premeditation,

[1] 42 U.S.C.A. § 1983.

an element that the State was required to prove.[2] When reviewing a challenge to the sufficiency of the evidence, we must determine, considering the evidence in the light most favorable to the prosecution, whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[3] We draw all reasonable inferences from the evidence in the prosecution's favor, and interpret the evidence most strongly against the defendant.[4] We assume the truth of the prosecution's evidence and all inferences that the trier of fact could reasonably draw from it.[5] We defer to the trier of fact to resolve any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of the witnesses.[6]

"Premeditation is the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short."[7] Evidence that the defendant prepared a gun and shot a victim sitting quietly in a chair is sufficient to support a finding of premeditation, even if the evidence is circumstantial.[8]

The State presented sufficient direct evidence of premeditation.

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[2] RCW 9A.32.030(1)(a).

[3] State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

[4] State v. Joy, 121 Wn.2d 333, 339, 851 P.2d 654 (1993); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[5] State v. Wilson, 71 Wn. App. 880, 891, 863 P.2d 116 (1993), rev'd on other grounds, 125 Wn.2d 212, 883 P.2d 320 (1994).

[6] State v. Boot, 89 Wn. App. 780, 791, 950 P.2d 964 (1998).

[7] State v. Rehak, 67 Wn. App. 157, 164, 834 P.2d 651 (1992).

[8] Rehak, 67 Wn. App. at 164.

Eyewitness Bligh described a calculated process where Arrington: emptied and then reloaded his gun with one bullet; warned Mitchell that he was going to fire until his shirt was returned; pulled the trigger on an empty chamber; checked the cylinder, told Mitchell that the bullet was coming and time was up; and then shot Mitchell where he sat. The other eyewitness, Joanne Raine, had a less precise memory of the events. However, she did not contradict Bligh. Arrington committed premeditated murder in front of eyewitnesses.

Motion to Replace Counsel

Whether a defendant's court-appointed counsel is unsatisfactory, and new counsel needs to be appointed, is within the sound discretion of the trial court.[9] If an issue of conflict is raised, the trial court must inquire into the nature and extent of the conflict, and take appropriate action.[10] Reversal is required if the defendant demonstrates that an actual conflict exists.[11] However, the mere filing of a federal complaint does not create a per se conflict of interest; an inquiry must still be conducted by the trial court.[12]

In State v. McDonald,[13] a pro se defendant sought to replace his standby public defender, Gary Gaer.[14] After several unsuccessful attempts to dismiss Gaer, McDonald sued Gaer in federal court and moved to dismiss him again, alleging a conflict of interest.[15] The court denied the motion. When the

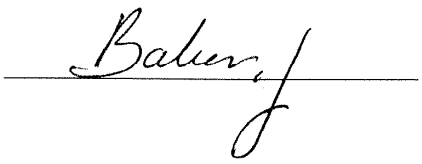
[9] State v. Sinclair, 46 Wn. App. 433, 436, 730 P.2d 742 (1986).
[10] State v. McDonald, 143 Wn.2d 506, 513, 22 P.3d 791 (2001).
[11] McDonald, 143 Wn.2d at 513.
[12] See McDonald, 143 Wn.2d at 513-14.
[13] 143 Wn.2d 506, 513, 22 P.3d 791 (2001).
[14] McDonald, 143 Wn.2d at 509.

prosecutor's office was assigned to defend Gaer against McDonald in the federal suit, both Gaer and McDonald moved to replace Gaer as counsel. The trial court denied the motions without conducting an inquiry.[16] Our Supreme Court concluded that the trial court erred when it failed to investigate "[t]he true conflict at issue here," which was not the filing of the federal complaint, but the assignment of the prosecutor's office to defend Gaer against McDonald.[17]

Here, the trial court did conduct a thorough review of Arrington's allegations of attorney misconduct. Arrington produced a list of "withheld" discovery compiled by a defense investigator. However, the court reviewed the record, questioned both attorneys, and concluded that the evidence in question either did not exist or had already been disclosed. Arrington also alleged that evidence had been altered or tampered with, but the court could not find any support for those contentions either. Because the allegations leveled against Mr. Chalverus were unsubstantiated, and no action had been taken in the federal case other than mailing of the complaint, the trial court did not abuse its discretion in refusing Arrington's motion to replace counsel.

AFFIRMED.

FOR THE COURT:



[15] McDonald, 143 Wn.2d at 509.
[16] McDonald, 143 Wn.2d at 509, 514.
[17] McDonald, 143 Wn.2d at 514.

Coleman, J.

Cox, J.